IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITON NO. 163 OF 2007

The State of Maharashtra .... Petitioner.

V/s

Shri Vijay Appasaheb Khemlapure & Anr. .... Respondents.

Mr. P.A. Pol, APP for the Petitioner - State.

Mr. Umesh Mankapure for Respondent Nos. 1 and 2.

CORAM: V.M. KANADE, J.
DATE : 3rd September, 2007

P.C.:

1. Petitioner is challenging the order passed by the Chief Judicial Magistrate, Sangli dated 18/11/2005 whereby the complaint was dismissed and the accused were acquitted of the offence punishable under the provisions of Prevention of Food Adulteration Act, 1954. Against the said order, complainant preferred revision application in the Sessions Court which was also dismissed. Against the said order, present Writ Petition has been filed.

2. The learned Counsel appearing on behalf of Respondent Nos. 1 and 2 has raised a preliminary objection regarding maintainability of the Writ Petition. It is submitted that the only remedy which was available to the Petitioner against the order of acquittal was to file an appeal against acquittal and obtain leave of this Court under section 378 of the Criminal Procedure Code.

3. In my view, the aforesaid objection raised by the learned Counsel appearing on behalf of Respondent Nos. 1 and 2 will have to be accepted. Though the order dated 18/11/2005 states that the accused are discharged, in fact, on the dismissal of the complaint, the accused are acquitted and merely because it is mentioned in the order that the accused are discharged, does not change the character or nature of the order which is passed by the Magistrate. Hence, proper course of action was to prefer an appeal against acquittal. Revision, in any case, also has been dismissed. Further, it has been mentioned in the order passed by the learned Chief Judicial Magistrate that the case was pending for about 10 years and yet the complainant did not adduce evidence though number of chances were given to the complainant. Hence, even otherwise, no case is made out for interfering with the impugned order. Writ Petition is accordingly dismissed.

(V.M. KANADE, J.)